No. 11599

IN THE

United States Circuit Court of Appeals

FOR THE NINTH CIRCUIT

SAMUEL MORRIS WIXMAN, also known as SHULIM WIXMAN,

Appellant,

vs.

UNITED STATES OF AMERICA,

Appellee.

BRIEF OF APPELLEE.

JAMES M. CARTER,
United States Attorney,

RONALD WALKER,
Assistant United States Attorney,

United States Postoffice and
Courthouse Bldg., Los Angeles (12),
Attorneys for Appellee.

BRUCE G. BARBER,
District Adjudications Officer,
Immigration and Naturalization Service,
458 South Spring Street,
Los Angeles 13, California,
on the Brief.

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BRIEF OF APPELLEE.

Jurisdiction.

Appellee adopts the statement of appellant concerning jurisdiction.

Statement of the Case.

Appellant's statement of "proceeding" is adopted herein as set forth at page 3 of Appellant's brief.

Appellant's statement of facts is not adopted. The essential facts are stated herein as follows: Appellant was born in Russia on July 25, 1900 [R. 4a]. He emi-

grated to the United States from Russia in 1911 and has since resided in this country. Appellant married a United States citizen in 1927. He has one native born child [R. 4a]. He graduated from Yale University in 1923 [Tr. 211]. During the time he was enrolled at Yale University, he was a member of the armed forces of this country for about one year during World War I. From 1929 until 1940 he taught economics and history in the Los Angeles Junior College, which thereafter became the Los Angeles City College [Tr. 213, 226]. Since 1940 Appellant states he has been employed in making studies and surveys for social organizations [Tr. 222-223].

Discussion of documentary evidence and the testimony of witnesses will be covered under the headnote "evidence and testimony" *infra,* in the argument.

SUMMARY OF ARGUMENT.

POINT I.

The Trial Court Was Justified in Considering the Behavior and the Expressed Mental Attitude of the Alien Appellant Prior to the Commencement of the One-Year Period Immediately Preceding His Petition for Naturalization in Determining His Fitness for a Grant of Citizenship.

The requirement of the establishment of the qualifications for naturalization during the statutory period of residence of one year immediately preceding the date of filing petition for naturalization relates to the minimum proof that must be established by the alien seeking naturalization. The period of the alien's life into which the Court may inquire in determining fitness for naturalization is not so statutorily circumscribed. The mental attitude and beliefs of the Appellant as expressed by him in 1934 or 1935 were inconsistent with a showing of attachment to the principles of the Constitution and of being well disposed to the good order and happiness of the United States. It was, therefore, incumbent upon the Appellant to establish to the satisfaction of the Court that he had in good faith changed from his earlier mental convictions. This he must do by affirmative evidence.

POINT II.

The Trial Court Was Correct in Its Interpretation of the Principles of the Constitution, and in Concluding That Appellant's Views Were Contrary to Such Principles, Within the Meaning of the Naturalization Laws.

The decision of the Supreme Court in *Schneiderman v. U. S.*, 320 U. S. 118, 63 S. Ct. 1333, cannot be taken as a test to be applied in a proceeding in which an alien is seeking naturalization to determine his attachment and disposition to the good order and happiness of the United States. The test used there is one applied where the proceeding is to take away the status of citizenship.

ARGUMENT.

POINT I.

The Trial Court Was Justified in Considering the Behavior and the Expressed Mental Attitude of the Alien Appellant Prior to the Commencement of the One Year Period Immediately Preceding His Petition for Naturalization in Determining His Fitness for a Grant of Citizenship.

Under the general statute relating to naturalization[1] "No person * * * shall be naturalized unless such petitioner, (1) immediately preceding the date of filing petition for naturalization has resided continuously within the United States for at least five years * * * (2) has resided continuously within the United States from the date of the petition up to the time of admission to citizenship, and (3) during all the periods referred to in this subsection has been and still is a person of good moral character, attached to the principles of the Constitution of the United States, and well disposed to the good order and happiness of the United States."

As the husband of a citizen Appellant was entitled to certain exemptions from the requirements of the foregoing general statute which, *inter alia,* reduces the period of residence to one year:[2]

> "(2) In lieu of the five-year period of residence within the United States, * * * the petitioner

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[1]Sec. 307, Nationality Act of 1940 (54 Stat. 1142; 8 U. S. C. 707).

[2]Sec. 310(a), Nationality Act of 1940 (54 Stat. 1144; 8 U. S. C. 710).

shall have resided continuously in the United States for at least one year immediately preceding the filing of the petition."

The statutory requirement with respect to residence and a showing of being well disposed and attached during the period of residence, merely fixes the minimum requirement which petitioners for citizenship must meet, but is not a restriction upon the Court to that period of residence in its inquiry concerning the fitness of the petitioner for citizenship.

The Court has the duty to see to it that the petitioner measures up to this minimum requirement otherwise the Court is bound to deny naturalization. Congress has stated in clear terms that "A person may be naturalized as a citizen of the United States in the manner and under the conditions prescribed in this Act, *and not otherwise.*"[3] "Courts are without authority to sanction changes or modifications; their duty is rigidly to enforce the legislative will in respect of a matter so vital to the public welfare."[4]

Appellant's contention (Br. 15, 17)[5] that the Court erred in considering matters occurring outside the one year period has no judicial support and is opposed to public policy.

The question for the determination of the trial court was not whether the Government had presented evidence

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[3]Sec. 301(a), Nationality Act of 1940 (54 Stat. 1140; 8 U. S. C. 701).

[4]*U. S. v. Ginsberg*, 37 S. Ct. 422, 425, 243 U. S. 472, 475, 61 L. Ed. 853.

[5]The abbreviation "Br." when used herein refers to Appellant's brief.

to establish a continued belief during the year 1944-1945 in the ideologies espoused by Appellant in his lecture in 1934 or 1935 as contended by Appellant (Br. 15, 17, 22), but rather whether Appellant could establish by any convincing proof that he had in good faith changed from his earlier expressed mental convictions. By whatever term they may be designated, the trial court concluded that the ideologies admittedly advocated as his own in 1934 or 1935, fell short of establishing to its satisfaction that Appellant had shown by such expressions and conduct an attachment to the principles of the Constitution and that he was well disposed to the good order and happiness of the United States. The testimony of the various students and Professors Cruse and Frankian fairly show Appellant bore the reputation at the College, at least from 1931 up to the time he left the College in 1940 of favoring an ideology which they variously characterized as "socialism", "Markism", "communism" and "collectivism". On the other hand at the hearing before the trial court the testimony by the Appellant and on his behalf failed to show that his mental convictions had changed to the extent that he opposed his earlier convictions and beliefs as expressed in 1934 or 1935. Appellant's proof was at best only of a negative character. The expressions of his beliefs in 1934 or 1935 clearly demonstrated strongly entrenched mental convictions. He had long since arrived at an age of maturity. Obviously such a mental attitude could not easily be changed. It was clearly, therefore, incumbent upon Appellant to carry the burden of satisfying the trial court that strong and substantial reasons had prompted his opposition to his earlier expressed beliefs.

Judicial authority hereinafter referred to does not support Appellant's contention to the effect that the trial court erred in considering the mental attitude or conduct of Appellant prior to the one-year residential period immediately preceding petitioning for naturalization (Br. 15, 17).

Sound public policy in the granting of naturalization is opposed to such a contention. For example, an alien legally in this Country could, merely by the simple expedient of marrying a citizen and desisting from a life of crime for the short period of less than two years, demand that the Court grant his petition for naturalization, and then resume his former criminal activities. Similarly, aliens holding beliefs opposed to the American way of life, could by forcing a favorable mental attitude, acquire naturalization within the same period of time, and then publicly espouse such contrary beliefs. Even if the Government could carry the heavy burden of establishing in a cancellation suit by "clear, unequivocal, and convincing evidence which does not leave the issue in doubt"[6] that such alien was not entitled to naturalization, the remedy of cancellation would be wholly inadequate, because such alien could quickly again acquire naturalization by the same method for the reason that his mental attitude back of the one-year period could not be inquired into. "That would indeed put a premium on the successful perpetration of frauds against the nation."[7]

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[6]Rule laid down in *Schneiderman v. United States*, 320 U. S. 118, 63 S. Ct. 1333, 88 L. Ed. 1796.

[7]Phrase borrowed from *Knauer v. United States*, 328 U. S. 654, 674, 66 S. Ct. 1304, 1315.

In the case of the petition for naturalization of the spouse of a citizen where the contention was made that "* * * since by Sec. 707(a) the period of 'good behavior' is made coextensive with the period of residence (to-wit, five years), by the same token, the period of 'good behavior' when naturalization is sought under Sec. 710(a), should be coextensive with the period of residence, to-wit, one year" the Court concludes that in its opinion "neither reason nor authority supports such a contention. If there is any doubt at all as to whether petitioner can satisfy the statutory prerequisites, the issue must be decided against him, inasmuch as he has the burden of proof. * * * Congress clearly did not intend that the circumstance of marriage by an alien to an American citizen spouse should relieve a petitioner from substantial requirements of 'good behavior' prescribed for all other aliens. * * * It is unthinkable that we should restrict our inquiry as to this vital matter, because the period of residence is shortened, when application is made under Sec. 310(a) of the Nationality Act. * * * The statute in no way imposes any limitation upon judicial inquiry as to the petitioner's character. All that the statute does is to make ineligible for citizenship those who cannot show good moral character for at least five years prior to the application for citizenship. It follows, therefore, that whether the petitioner has the burden of showing five or one year's good behavior, the inquiry of the Court on the subject matter is not statutorily circumscribed."[8]

Where an alien was convicted of first degree murder in 1913; pardoned in 1932, and petitioned for citizenship in

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[8]*In re Laws,* 50 F. S. 179.

1940, the trial court went back of the five year period into the circumstances surrounding the conduct of the alien in 1913 giving rise to the murder charge, in determining his fitness for citizenship.[9]

In determining attachment to the principles of the Constitution where the alien-petitioner for naturalization had been guilty of violating the National Prohibition Act, the Eighth Circuit Court of Appeals held in a cancellation suit that it was proper to consider violations occurring from 1½ to 2½ years after naturalization.[10] Such conduct was clearly outside the statutory residential period.

The trial court in determining fitness of an alien for citizenship in 1945, took into consideration his conviction on a narcotic charge in 1914 when the alien was a mature adult.[11]

In a suit to set aside a certificate of naturalization wherein the contention was made that moral delinquency prior to the five year period was immaterial, the Court reasons that such a contention overlooks the fact that an order admitting an alien to naturalization is not made as a matter of course, but is an act of grace, and that before he can be admitted to citizenship, "it must be made to appear to the satisfaction of the court" that such alien has disclosed the facts bearing on his moral conduct "during and before the five-year period, in order that the court may determine whether, taking into account

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[9]*In re Balestrieri*, 59 F. S. 181.

[10]*Turlej v. United States*, 8th Cir., 31 F. (2d) 696.

[11]*Petition of Gabin*, D. C., 60 F. S. 750.

his whole conduct, he has in fact been a man of good moral character during the five year period."[12]

Naturalization was denied in 1926 where the alien had been convicted in 1912 of manslaughter and paroled in 1915.[13]

In a cancellation suit where it was urged that conduct outside the five-year period should not be considered the Court concluded "* * * that the five-year period * * * is not a statute of repose, insofar as to preclude a court from going beyond it, in order to ascertain the behavior and antecedent conduct of the petitioner, for the purpose of so far judging the future by the past as to form a conclusion whether benefit or harm would accrue from such petitioner's admission as a citizen. To take any other view of the law would be tantamount to saying that which all the decisions hold cannot be said, namely, that one applying for citizenship does so as a matter of right, and not as an humble petitioner for an act of grace. As I read the statutes, they vest discretion in the trial courts * * * and I cannot read the statute in such wise as to construe it to mean that the greatest criminal who ever left his native country unhung may come to this country, and after five years of impeccable conduct demand, and on his demand compel, the acceptance of himself as a citizen by this country."[14]

An alien who pleaded guilty to a charge of murder in the second degree was denied citizenship, although before

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[12]*United States v. Etheridge,* D. C., 41 F. (2d) 762.

[13]*In re Caroni,* D. C., 13 F. (2d) 954.

[14]*United States v. Kichin,* D. C., 276 Fed. 818, 822. There is no vested right in an alien to the privilege of naturalization. See *Luria v. U. S.,* 231 U. S. 23, 34 S. Ct. 10, 58 L. Ed. 101.

the offense and for more than five years after the expiration of the imprisonment his conduct revealed no cause for censure.[15]

In determining whether the alien spouse of a citizen carried the burden of establishing attachment and that he had ceased to believe in revoluntionary principles as enunciated in his book "I Knew Hitler", the trial court concluded it was not restricted to the three-year period, but that "* * * the Court may require that this petitioner prove good moral character and attachment to the principles of the Constitution of the United States for at least five years, and for a longer period if deemed necessary."[16]

In considering the alien's motion to strike from an order denying citizenship the language "with prejudice for a period of five years" in the case of a petition filed by the alien spouse of a citizen, the trial court concluded it was not restricted to the one-year period, stating that "* * * the Court can require proof for at least five years and for a longer period if deemed proper. * * * The test is not the length of time an alien has resided in the United States without being convicted of a crime, but whether the moral character and mental attitude of the individual entitle him to citizenship, * * * and the government may inquire into his entire life history to ascertain his true character and inclinations."[17]

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[15]*In re Ross* (C. C.), 188 Fed. 685.

[16]*Petition of Ludecke*, D. C., 31 F. S. 521, 523.

[17]*In re Taran*, D. C., 52 F. S. 535, 539.

In an appeal from a suit cancelling citizenship granted in 1904 this Honorable Court held that the lower court was justified in considering the declarations and expressions during the years 1916 and 1917 in determining the attitude of the alien when he applied for naturalization, stating that "One who spoke in that way * * * must have taken the oath * * * with a reserved determination, to be kept down, but nurtured, until a momentous time might come. In years, however, the time did come, and the criterion of original fraud must be the later conduct, which, in its relation to the earlier attitude, will furnish safe ground for judgment."[18]

For a period of ten or twelve years prior to 1931 an alien petitioner for naturalization testified that he had paid officers for protection in connection with his liquor operations. He was convicted a number of times for liquor violations and served an aggregate sentence of three years. He was finally released from imprisonment in 1931. Just prior to his release he had expressed the conviction that all public officers were corruptible and purchasable. No evidence of misconduct was shown from 1931 up to the time of his final hearing before the trial court in 1938 on his petition for naturalization. The contention was raised that inquiries concerning his conduct back of the five-year period were improper. The trial court disagreed with this contention. In addition to considering the criminal record of the alien, the trial court made the

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[18]*Schurmann v. United States,* 9th Cir., 264 Fed. 917, 920.

following comment with respect to the alien's expressed belief in the corruptibility of public officials. *"There is no evidence that the attitude of mind as thus expressed by the applicant has undergone a change."* (Emphasis ours.) Further, "The domestic enemy is more dangerous than the foreign enemy for the reason that history is replete with the record of governmental disintegration and decay arising solely from corruption within, which means the inroads of domestic enemies upon the basic foundations of the government."[19]

One Court expressed the view that the entire life history of the candidate for naturalization may be inquired into under the authority of the Government to cross-examine specified in the naturalization statutes.[20]

A Question of Fact Presented.

The question of whether an alien seeking naturalization is attached to the principles of the Constitution and is well disposed to the good order and happiness of the United States is one of fact.

> "In specifically requiring that the court shall be satisfied that the applicant, during his residence in the United States, has behaved as a man of good moral character, attached to the principles of the Constitution of the United States, etc., it is obvious that Congress regarded the *fact* of good character and the

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[19]*In re De Mayo*, D. C., 26 F. S. 996, 999.

[20]*In re Kornstein*, 268 Fed. 172, 173. The authority herein referred to is now found in Sec. 334(d), Nationality Act of 1940 (54 Stat. 1157; 8 U. S. C. 734(d)).

> *fact* of attachment to the principles of the Constitution as matters of the first importance. The applicant's behavior is significant to the extent that it tends to establish or negative these facts." (Emphasis by the Court.)[21]

In determining these facts, "a wide, judicial discretion is lodged in the judge who hears a petition for naturalization,"[22] and the ultimate finding of the trial court will not be rejected on appeal "except for good and persuasive reasons,"[23] for, as has been said, "the proceeding is of such a character that its decision must rest largely with the trial court; if he does not exercise an unreasonable discretion, his decision must stand."[24]

It is submitted that the trial court exercise no "unreasonable discretion" in denying the instant petition. Upon a "fair consideration of the evidence adduced" before the trial court "doubt" would inevitably be raised "in the mind of the court" as to whether Appellant from his behavior and declarations of his beliefs as advocated by him in about 1935, his reputation at the college from 1931 to 1940, weighed against testimony on his behalf at the final hearing which viewed in its most favorable light was at best only negative, was a person who in good faith is attached to the principles of the Constitution and well disposed to the good order and happiness of the United States.

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[21]*United States v. Macintosh,* 283 U. S. 605, 616, 51 S. Ct. 570, 572, 75 L. Ed. 1302.

[22]*Tutun v. United States,* 12 F. (2d) 763.

[23]Same as 21, *supra,* 283 U. S. 605, 627, 51 S. Ct. 570, 576.

[24]*In re Fordiani,* 120 Atl. 338, 342. See, also, *Allan v. United States,* 9th Cir., 115 F. (2d) 804.

POINT II.

The Trial Court Was Correct in Its Interpretation of the Principles of the Constitution and in Concluding That Appellant's Views Were Contrary to Such Principles, Within the Meaning of the Naturalization Laws.

THE TEST LAID DOWN BY THE SCHNEIDERMAN DECISION[25] IS NOT APPLICABLE TO THE INSTANT PROCEEDING.

Appellant's contention (Br. 16, 25), that in determining whether the views of the Appellant are opposed to the principles of the Constitution, the test laid down by the *Schneiderman* decision is controlling, is ruled out by the clear and unmistakable language of the decision itself (320 U. S., p. 120):

> *"This is not a naturalization proceeding in which the Government is being asked to confer the privilege of citizenship upon an applicant.* Instead the Government seeks to turn the clock back twelve years after full citizenship was conferred upon petitioner by a judicial decree, and to deprive him of the priceless benefits that derive from that status. * * * This does not mean that once granted to an alien, citizenship cannot be revoked or cancelled on legal grounds under appropriate proof. But such a right once conferred should not be taken away without the clearest sort of justification and proof. *So, whatever may be the rule in a naturalization proceeding* (see *United States v. Manzi,* 276 U. S. 463, 467, 48 S. Ct. 328, 329, 72 L. Ed. 654), in an action instituted under

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[25] *Schneiderman v. United States,* 320 U. S. 118, 63 S. Ct. 1333, 88 L. Ed. 1796.

> Sec. 15 for the purpose of depriving one of the precious right of citizenship previously conferred we believe the fact and the law should be construed as far as is reasonably possible in favor of the citizen." (Emphasis ours.)

In the *Schneiderman* cancellation proceedings the Supreme Court concluded:

> "That the Government has not carried its burden of proving by 'clear, unequivocal, and convincing' evidence which does not leave 'the issue in doubt' that petitioner obtained his citizenship illegally."[26]

The Government, of course, has no such burden in the instant naturalization proceeding.

The *Schneiderman* case concerned a United States citizen. The instant proceeding concerns the grant of a privilege being sought by an alien.

In the *Schneiderman* case there was no evidence of utterances made by Schneiderman prior to or at the time of his naturalization showing a lack of attachment to the principles of the Constitution. In the instant proceeding there was evidence before the trial court of Appellant's beliefs and behavior in 1934 or 1935 and reputation at the College from 1931 to 1940, and no affirmative evidence was produced before the trial court showing that Appellant opposed his earlier mental convictions. (See discussion *infra* under the headnote "Evidence and Testimony.")

The *Schneiderman* decision in using the language "So, whatever may be the rule in a naturalization proceeding"

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[26]Same at note 25 at 158 U. S. 320, at 1352, S. Ct. 63.

refers to a prior decision of the Supreme Court which sets forth the test or the rule in a naturalization proceeding where an alien is seeking a grant of citizenship, as follows:

> *"Citizenship is a high privilege, and when doubt exists concerning a grant of it, generally at least, they should be resolved in favor of the United States and against the claimant."*[27] (Emphasis ours.)

The rule here stated requires that the alien seeking naturalization satisfy the trial court that he is worthy of the high privilege of citizenship. Certainly then, the expression of mental convictions and beliefs are measured by an entirely different test when the candidate is seeking the high privilege of citizenship, than in a suit brought to take away the status of "citizen."

That the test here must be evidence which satisfies the trial court is clearly stated by the Supreme Court:

> "The applicant for citizenship, like other suitors who institute proceedings in a court of justice to secure the determination of an asserted right, must allege in his petition the fulfillment of all conditions upon the existence of which the alleged right is made dependent, *and must establish these allegations by competent evidence to the satisfaction of the court."*[28] (Emphasis ours.)

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[27]*United States v. Manzi*, 276 U. S. 463, 467, 48 S. Ct. 328, 329, 72 L. Ed. 654.

[28]*Tutun v. United States*, 270 U. S. 568, 578, 46 S. Ct. 425, 427, 70 L. Ed. 738.

Benefit to the Nation the Ultimate Criterion.

The ultimate criterion in granting naturalization to aliens is benefit to the Nation. Herein again there is a wide divergence between this test and that laid down in the *Schneiderman* decision. The test of benefit to the Nation has ample judicial support. The Supreme Court supports this latter view:

> "In other words, it was contemplated that his admission should be mutually beneficial to the government and himself, the proof in respect of his established residence, moral character, and attachment to the principles of the Constitution being exacted because of what they promised for the future, rather than for what they told of the past."[29]

Evidence and Testimony.

The decision of the trial court, which by stipulation became the findings of fact and conclusions of law [Tr. 403-4], contains a comprehensive discussion of the evidence [Tr. 385, 403]. The testimony of the seven witnesses testifying on behalf of the Government relative to Appellant's beliefs and teachings in economics and government is here briefly summarized as follows:

Burbank Lewis testified in effect that Appellant stated he was going to teach Marxism at City College [Tr. 5].

Catherine Mantalica testified that he ridiculed religion and made "some slurring remark in reference to the Pope" in an economics course [Tr. 12].

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[29]*Luria v. United States,* 231 U. S. 9, 23, 34 S. Ct. 10, 13, 58 L. Ed. 101. See, also, *In re Sigelman,* 268 Fed. 217 (D. C. Mo.), and *In re Caroni,* 13 F. (2d) 954 (D. C. Cal.)

Roy F. Spaulding, Jr., testified that Appellant made comparisons always unfavorable to capitalism and favorable to socialistic doctrines, communistic doctrines and doctrines of that type of economic theory [Tr. 30, 31]. He further testified that Appellant taught that capitalism was just about dead and people were getting smarter all the time and would turn to socialism and that he made slandering remarks in a sly manner against God [Tr. 32].

Belford M. Cruse, a Professor in the same college, testified that he had discussed politics with the Appellant and "As a general principle I felt that Mr. Wixman rather favored the ideology of Communism." He based this impression upon "the general opinion you get from discussing the subject with any individual" [Tr. 38].

Sooren Franklin, another Professor in the same college, testified that students at the college complained that they had heard lectures on Communism [Tr. 82]; that such complaints extended from 1931 to 1940 [Tr. 86]. The students further sensed "that he was advocating or preaching that particular type, and finding good points about it in contrast with our own" [Tr. 91].

P. A. Horton, an investigator, testified that he attended a meeting at which a Hindu who spoke on the general theory of Soviet Communism was introduced to the chairman of the meeting by Appellant [Tr. 98, 102, 103]. He also heard a group singing the Communist Internationale at the Appellant's home [Tr. 100].

The foregoing is direct evidence of Appellant's political beliefs and the reputation he bore at the college. The testimony of these witnesses finds corroboration in Appellant's written declarations as shown in his lecture,

"Economic Trends" [Tr. 235; Ex. 1, R. 5-25]. These witnesses were convinced that Appellant was doing more than merely teaching the "Marxist," "Communist," and "Socialist" theories. This belief also finds corroboration in Appellant's lecture "Economic Trends." Appellant's lecture "Economic Trends" [Tr. 235, Ex. 1] was written and delivered before a group of students and other persons at City College, about 1935 [Tr. 241].

At the outset of this lecture Appellant admitted that some might consider his thoughts and principles as unpatriotic. He protested his loyalty to "this country" but continued, "However, the country I have in mind may perhaps be to a degree different from that to which some have been accustomed" [Tr. 389]. He continues that he is about to offer an examination of trends of thought in present day economic life [Tr. 390]. He then analyzes the Capitalistic system and finds that it is not satisfactory; that too few have too much and too few have not enough. He concludes that Capitalism has the seeds of its own destruction, "Capitalism, then, under those circumstances fails to provide the essentials for the system which it hopes will keep it alive" [Tr. 392, 393, 394, 395, 396]. He then proceeds to discuss "state capitalism" as an economic system. "With state capitalism out of the picture, what then is to take its place" [Tr. 397]? After a discussion of Facism he begins his examination and definition of "the collectivist state." "The collectivist state," he wrote, "according to its proponents, in brief, proposes that, 'all resources, all land and buildings, all manufacturing establishments, mines, railroads and other means of transportation and communication, should be, not private property but the common property of all those who work.'

It further proposes that society should consist only of those who work, which means that all members of society should be socially useful human beings . . . that production be made to serve the needs of those who work, rather than to serve the needs of a few parasites . . . that production of goods be planned scientifically to avoid anything resembling the crises of capitalist society, that the society established be intent on developing the machine technique, mass production, and a minute division of labor to the fullest possible extent . . .' " [Tr. 397, 398].

He states the collectivist believes that this state of practical idealism will be reached through four states of development [Tr. 398].

> "First of all, there must be the stage of bourgeois capitalism, which 'is characterized by private property, free enterprise and competition. This state of being, because of its inner defects and contradictions, must give way to another, 'The change to be expedited and effect by the strong, determined, class-conscious part of the working class—all workers or producers, or those laboring by brain or brawn—when a favorable opportunity presents itself' " [Tr. 235, 251].

Is Appellant using the words of an alien who believes in the orderly change provided by our present Constitutional system of amendment when he employed the phrase above quoted "when a favorable opportunity presents itself"?

Further, he stated that the change from the present system of "bourgeois capitalism, private property, free enterprise and competition" is to be "expedited" by the "strong," "determined," "class-conscious part of the

working class." Can this language reasonably be construed when considering an alien seeking the high privilege of citizenship, an advocacy that his ideal "collectivist state" is to be arrived at by peaceful changes under our present system of government by way of Constitutional amendment?

The terms he employs in describing "collectivism" leaves no doubt that it is his ideal. For he states it is "man's ultimate goal," "the panacea for which he has been striving for untold ages," "his El Dorado," "his promised land—his ideal which he is to reach here on this earth now, and not 'by and by when you die'" [Tr. 389, 399, 400].

A look at the second stage in arriving at the ultimate goal of "collectivism" advocated by Appellant *precludes any contention that Appellant believes that his ideal of a "collectivist state" is to be arrived at by Constitutional amendment.* In this second stage he is willing to discard the present system of free enterprise and *submit to the rule of the "iron hand" of an "intelligent minority" until all people are educated to the "ideals" of the "collectivist state."* This is clearly shown by the following quotation from his lecture:

> "This achieved, there is to follow the second stage—'The dictatorship of the masses.' Realizing that since not all the workers are capable in managing government in industry, there must be an intelligent minority to pave the way by holding power and ruling with an iron hand till socialism is brought into being and all people are educated to its ideals" [Tr. 235, 251].
>
> "The second stage is to give way to the socialist society—the third phase of collectivism. During this,

'All means of production will be in the hands of the democratically governed state. The masses of workers will now be in control. Wages will still be paid on the basis of efficiency or productivity, with some prevailing differences in wages as a result.' Since there will still be considerable centralization of economic or political control, unless all vestiges of class opposition have been eliminated, this third stage is very much akin to state socialism" [Tr. 235, 252].

"The last and final phase of this societal change will be the collectivist society—the ultimate goal. This time, coercive authority will have disappeared, everyone voluntarily participating in co-operative commonwealth. This will be the real 'Classless' society, with no wage system, no price, no money—a system based upon the principle of 'from each according to his ability, to each according to his need.' Thus, cryptly put, will evolve the state known as collectivism, a state which according to the prophetic, far-seeing vision of Karl Marx, is historically the logical outcome of a system of society that has outlived its usefulness, its mission, its place in history of economic growth of mankind. It is man's ultimate goal. It is the panacea for which he has been striving for untold ages. It is his El Dorado, his Promised Land—his ideal which he is to reach here on this earth now, and not 'by and by when you die' " [Tr. pp. 398, 399, 400].

Then he continues:

"In conclusion may I say that the choice we are asked to make lies before us. If an economic system is to be judged on the basis of a worth-while standard of living for every man, woman and child under it, then we must choose accordingly. On that basis I cannot see any hope for economic planning in Italy,

> Germany, Japan and other such Fascist countries. Nor do I see too much hope for this same economic planning in England, the United States, France and other democratic and pseudo-democratic states. Why? In all these instances unrestrained capitalism is in the saddle, and economic planning for all is wholly inconsistent with, and impossible under, unchecked capitalism. On the other hand, this study and reflection could lead one to conclude that progress, human well being—civilization in brief, definitely and decidedly has little to fear, nay, it has much to expect, from a system of genuine socialization" [Tr. 400, 401].

That the foregoing quotation from the lecture represented the views of Appellant is undeniably shown by further quotation from the same lecture:

> "If I am permitted to paraphrase Lincoln's answer, I would say that, if some ideas I shall bring out are somewhat unconventional, unorthodox by far, I, too, do not mind them, for I am squarely behind them. I do hope you out there in front they will not jar" [Tr. 388].

There can be no doubt that Appellant was expressing his own mental convictions and beliefs and that he held an active rather than a passive adherence to such beliefs, so much so that he was willing to risk criticism and position for the opportunity of letting the students know that he for one believed in "collectivism" [Tr. 240, 388]. He described the "state known as collectivism" [Tr. 400] as "man's ultimate goal. It is the panacea for which he has been striving for untold ages. It is his El Dorado, his Promised Land—his ideal which he is to reach here on this

earth now, and not 'by and by when you die'" [Tr. 400]. These are very glowing terms. They are terms used in the sense of advocacy and not by way of explanation. He believes this state of collectivism may be realized because "according to the prophetic, far-seeing vision of Karl Marx, is historically the logical outcome of a system of society that has outlived its usefulness, its mission, its place in history of economic growth of mankind" [Tr. 400]. His reference to Karl Marx as possessing a "prophetic, far-seeing vision" are terms indicating the depth of Appellant's convictions and favorable belief in the views of Karl Marx. They are not terms merely explaining a prophesy by Karl Marx.

When testifying before the trial court, at no time did Appellant indicate that he was opposed to the views and beliefs he had expressed in his lecture. An example of his testimony in this respect is shown in connection with questions relating to that part of his lecture dealing with the "inescapable capitalist tendency to generate renewed depression" in answering the question "Does it express your opinion?" in the following words, "On the basis of conditions at that time. At the present time I could say with modification, that it can be changed, that it can be revived; that it has been shown it could be revived during the war period." Question, "Is it your belief that this is a permanent revival of Capitalism?" Answer, "I could not look into the future" [Tr. 242].

Conclusion.

Appellee respectfully submits that the trial court was justified in concluding that Appellant at the time of delivering the lecture heretofore discussed was not attached to the principles of the Constitution nor well-disposed to the good order and happiness of the United States. In the words of the trial Judge in discussing certain phases of this lecture:

> "Up to that time he has not uttered one word of hope or of optimism. He has held out the picture of gloom, of destruction and disaster; that it makes little difference how the processes under the Constitution shall be invoked or employed, it is a case of utter disaster. Is that the sort of a picture that should be presented by a teacher of the youth of America during a time of travail and distress? Shouldn't there be some note of hope, of optimism, of encouragement, of steadfast adherence to the processes under which we live and under which a country has been built,—under which it was living at that time and endeavoring to work out, and did work out? It seems to me there cannot be any answer to that excepting that one who holds up that sort of a picture cannot be said to be well disposed towards the good order and happiness of the American people." [Tr. 396.]

And again [Tr. 401]:

> "If anyone can find any cause for joy, or happiness, or peace and contentment, for good order to any people, in that lecture, I cannot see it."

The burden of proof was upon appellant. It was well within the wide discretion lodged within the trial court to find that Appellant had failed to overcome the doubt in

the mind of the Court that Appellant was in fact attached to the principles of the Constitution and to convice the Court that petitioner had changed his previous attitude.

The Court's decision does not constitute a limitation of academic freedom. Again in the words of the trial court [Tr. 403]:

> "The instructor should be a stimulating instructor, as one of the witnesses stated, but he should stimulate adherence to the American principle of life and not to some foreign ideology that is entirely alien to the makeup of the United States."

From the foregoing, we submit that Appellant has failed to meet the burden imposed upon him by our laws in such fashion as to permit him to be admitted to the high privilege of citizenship in the United States.

Respectfully submitted,

James M. Carter,
United States Attorney,

Ronald Walker,
Assistant United States Attorney,

Attorneys for Appellee.

Bruce G. Barber,
District Adjudications Officer,
Immigration and Naturalization Service,
on the Brief.